

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 JAMES PARSONS, INDIVIDUALLY AND
4 AS SPECIAL ADMINISTRATOR OF THE
ESTATE OF CAROLYN LEE PARSONS, *et*
al.,

5 Plaintiffs

6 v.

7 COLT'S MANUFACTURING COMPANY,
8 LLC, *et al.*,

9 Defendants

Case No.: 2:19-cv-01189-APG-EJY

**Amended Order Certifying Questions to
the Supreme Court of Nevada**

10 I respectfully certify to the Supreme Court of Nevada the following two questions of law
11 that may be determinative of matters before me and as to which there is no clearly controlling
12 precedent in the decisions of the Supreme Court of Nevada or the Nevada Court of Appeals:

- 13 • Under Nevada law, can a plaintiff assert a negligence per se claim predicated on
14 violations of criminal federal and state machine gun prohibitions absent evidence of
legislative intent to impose civil liability?
- 15 • Does a plaintiff asserting a wrongful death claim premised on allegations that firearms
16 manufacturers and dealers knowingly violated federal and state machine gun prohibitions
17 have “a cause of action against the manufacturer or distributor of any firearm . . . merely
because the firearm or ammunition was capable of causing serious injury, damage or
18 death, was discharged and proximately caused serious injury, damage or death[,]” under
Nevada Revised Statutes § 41.131?
- 19 • Does Nevada Revised Statutes § 41.131 allow a wrongful death claim premised on
20 allegations that firearms manufacturers and dealers knowingly violated federal and state
machine gun prohibitions because the statute is “declaratory and not in derogation of the
common law”?

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1 **I. BACKGROUND**

2 Carrie Parsons was killed in the October 1, 2017 mass shooting in Las Vegas. Her
3 parents, plaintiffs James Parsons and Ann-Marie Parsons, sue the manufacturers¹
4 (Manufacturers) and dealers² (Dealers) that made and sold the AR-15 rifles used in the shooting.

5 The Parsons filed suit in the Eighth Judicial District Court for Clark County, Nevada on
6 July 2, 2019, asserting claims for wrongful death, negligence per se, and negligent entrustment.
7 The defendants removed the case to the United States District Court for the District of Nevada.
8 The defendants moved to dismiss the Parsons' complaint, arguing that their claims are barred by
9 the Protection of Lawful Commerce in Arms Act (PLCAA), Nevada Revised Statutes (NRS)
10 § 41.131, and common-law causation principles. I originally dismissed the Parsons' negligent
11 entrustment and negligence per se claims without leave to amend because they failed to state a
12 cognizable claim under the PLCAA and Nevada common law. I denied the motion to dismiss
13 the wrongful death claim, concluding that as pleaded it was not barred by the PLCAA or
14 common-law causation principles. *Id.*

15 **A. Negligence Per Se**

16 I originally dismissed the Parsons' negligence per se claims because federal courts sitting
17 in Nevada have applied a rule announced in two Supreme Court of Nevada decisions that the
18 violation of a penal statute is not negligence per se absent evidence of legislative intent to impose
19 civil liability. *See Hinegardner v. Marcor Resorts, L.P.V.*, 844 P.2d 800, 803 (Nev. 1992); *Bell v.*
20 *Alpha Tau Omega Fraternity, Eta Epsilon Chapter*, 642 P.2d 161, 162 (Nev. 1982). I later

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22 ¹ Colt's Manufacturing Company LLC, Colt Defense LLC, Daniel Defense Inc., Patriot
23 Ordnance Factory, FN America, Noveske Rifleworks LLC, Christensen Arms, Lewis Machine &
Tool Company, and LWRC International LLC.

² Discount Firearms and Ammo LLC, Sportsman's Warehouse, and Guns and Guitars Inc.

1 reconsidered my order dismissing the Parsons’ negligence per se claims because: (1) the
2 Supreme Court of Nevada’s decisions could be read to support a presumption that a violation of
3 a penal statute is not negligent per se absent legislative intent or alternatively a presumption that
4 a violation of a penal statute is negligence per se absent legislative intent to the contrary; and
5 (2) the prior decisions do not address the issue outside the context of alcohol laws. I decided to
6 certify an additional question to the Supreme Court of Nevada because: (1) the question presents
7 significant issues with important public policy ramifications for Nevada; and (2) certification of
8 this dispositive question alongside the other questions will save time and judicial resources. So I
9 certify the above question regarding under what circumstances a violation of a penal statute
10 constitutes negligence per se.

11 **B. NRS § 41.131**

12 The defendants argued that the Parsons’ wrongful death claim is barred by NRS § 41.131,
13 which states that “[n]o person has a cause of action against the manufacturer or distributor of any
14 firearm or ammunition merely because the firearm or ammunition was capable of causing serious
15 injury, damage or death, was discharged and proximately caused serious injury, damage or
16 death.” The statute further states that it is “declaratory and not in derogation of the common
17 law” and includes an exception for actions based on production or design defects. *Id.*

18 The defendants argue this statute bars the wrongful death claim because the Parsons do
19 not allege that the AR-15s used in the October 1 shooting were defective. The Parsons respond
20 that their suit falls outside of § 41.131’s reach because their central allegation is that the
21 defendants violated federal and Nevada law by manufacturing and selling illegal machine guns.
22 Thus, they contend, they are not suing the defendants “merely” because the firearms were
23 capable of causing—and caused—their daughter’s death.

1 The text and legislative history of § 41.131 are capable of multiple reasonable
2 interpretations. The statute was enacted in 1985, but Nevada courts have yet to interpret it. The
3 parties have not identified, and I have not found, a federal or state decision that has even cited it.
4 This case presents important public policy concerns that should be addressed by the Nevada
5 court. I am particularly concerned by the defendants' concession in oral argument that under
6 their interpretation § 41.131 would immunize even a defendant that manufactured and sold
7 Tommy guns or M-16 rifles to civilians. The Supreme Court of Nevada should be allowed to
8 interpret § 41.131 on first impression. So I denied the defendants' motion to dismiss on this
9 ground without prejudice to refile it, and I certify the above questions to the Supreme Court of
10 Nevada.

11 **II. PARTIES' NAMES AND DESIGNATION OF APPELLANT AND**

12 **RESPONDENTS**

13 Plaintiffs: James Parsons, individually and as Special Administrator of the Estate of Carolyn Lee
14 Parsons; Ann-Marie Parsons.

15 Defendants: Colt's Manufacturing Company LLC; Colt Defense LLC; Daniel Defense Inc.;
16 Patriot Ordnance Factory; FN America; Noveske Rifleworks LLC; Christensen Arms; Lewis
17 Machine & Tool Company; LWRC International LLC; Discount Firearms and Ammo LLC;
18 DF&A Holdings, LLC; Maverick Investments, LP; Sportsman's Warehouse; Guns and Guitars
19 Inc.

20 Because the defendants argue that § 41.131 mandates dismissal of this lawsuit, I
21 designate the plaintiffs as the appellants.

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III. NAMES AND ADDRESSES OF COUNSEL FOR THE PARTIES

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15 **IV. ANY OTHER MATTERS THE CERTIFYING COURT DEEMS RELEVANT TO**
16 **A DETERMINATION OF THE QUESTIONS CERTIFIED**

17 I defer to the Supreme Court of Nevada to decide whether it requires any other
18 information to answer the certified questions. I do not intend my framing of the questions to
19 limit the Supreme Court of Nevada's consideration of the issues.

20 **V. CONCLUSION**

21 I THEREFORE ORDER the Clerk of Court to forward this Order under official seal to
22 the Supreme Court of the State of Nevada, 201 South Carson Street, Suite 201, Carson City,
23 Nevada 89701-4702.

DATED this 8th day of May, 2020.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE